

(1999) 04 MAD CK 0020

In the Madras High Court

Case No : W.A. No's. 161 of 1999 and C.M.P. No. 1623 of 1999

Sun Pharmaceutical Industries Ltd.

APPELLANT

Vs

Sun Pharmaceutical Industries Staff Union and Others

RESPONDENT

Date of Decision : 29-04-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 2 LLJ 1223

Hon'ble Judges : V.S. Sirpurkar, J;A. Raman, J

Bench : Division Bench

Advocate : A.L. Somayaji, for Aiyar and Dolia and V. Kalyanaraman, for the Appellant; Nalini Chidambaram, for S. Siliambanan, for the Respondent

Final Decision : Allowed

Judgement

Sirpurkar, J.—The appellant, Sun Pharmaceuticals Industries Limited (hereinafter called as ""The Company"" for the sake of brevity) has

challenged the order of a learned single Judge allowing the writ petition in W.P. No. 7869/1998 filed on behalf of the first respondent Sun

Pharmaceuticals Industries Limited Staff Union (hereinafter called as ""The Union"") whereby the 3rd respondent the Assistant Commissioner of

Labour was directed to take up the application submitted by the writ petitioner/ Union and decide the same and submit his report as enjoined by

Industrial Disputes Act and the Rules. The learned Judge has also directed that till such time the report is submitted by the Assistant Commissioner

of Labour, the Management should not precipitate the matters by going ahead with the plan of shifting the machinery, transferring the drugs and

employees to Mumbai, Baroda or Patna. The said application which was directed to be decided by the learned single Judge was for conciliation of

a dispute which was claimed to be existing between the Union and the company and was pending with the Assistant Commissioner of Labour

under Industrial Disputes Act.

2. It is during the pendency of that conciliation proceedings that the said Writ Petition No. 7869/1998 came to be filed claiming Interim relief of

Injunction against the company restraining it from shifting the machinery or transferring the drugs and employees of the members of the said Union

and/or carrying on activity to the detriment of the members of the said writ petitioner/Union.

3. Before considering the rival contentions, it will be better to see the factual matrix.

4. The company called "Tamilnadu Dadha Pharmaceuticals Limited" which was engaged in manufacture of medicines and drugs was operating at

Chennai and was having its registered office at Royapettah High Road, Chennai. There is another company viz., Sun Pharmaceuticals Industries

Limited, which was also a registered company, was having its registered office at Synergy House, Subhanpura, Gorwa Road, Baroda. There was

a move to amalgamate the two companies for which purpose, a petition came to be filed in this Court by Company Petition No. 341/97 filed on

behalf of Dadha Pharmaceuticals Limited. A similar petition came to be filed in Gujarat High Court in Company Petition No. 298/ 97. A scheme of

Amalgamation was presented in both the Courts and came to be approved by two separate orders, one passed by this Court and another by the

Gujarat High Court. It is needless to mention that before finalising the Amalgamation of the two companies, a public notice was given by both the

High Courts and ultimately both the Courts approved the Amalgamation thereby Dadha Pharmaceuticals Company which was described as

transferor company, merged with Sun Pharmaceuticals Company which was referred as a transferee company with the result that the said Dadha

Pharmaceuticals company lost its existence and merged with Sun Pharmaceuticals Limited and for all practical purposes became "Sun

Pharmaceuticals Industries Limited". Under the terms of Amalgamation, it is agreed and ordered by the Court that all employees in the transferor

company shall become the employees of the transferee company without any break or interruption in service and that the transferee company

would become responsible for all the financial implications on that account. It was also decided that the activities of the two companies would be controlled and viability to be obtained by streamlining the activities such as production activities etc. After the Amalgamation, however, when the appellant company started its operation, it seems that the 1st respondent Union came to be formed. The members of the 1st respondent Union as would be clear from the list which is found in the record are about 268 and also included some managers. It seems that after the merger the appellant company started working and in terms of the Amalgamation scheme, it was required to transfer some of the employees to other places where the plant of the company is situated. It seems that even some machinery was required to be shifted to the places like Bhiwandi, Mumbai in Maharashtra and Baroda in Gujarat. It seems that some of the members of the staff, who were transferred have accepted their transfers and some others resigned. All these activities of transfer mostly started from first half of the year 1998. The newly formed Union however started resisting this move on the part of the appellant company and started raising objections by writing letters etc. to various authorities in the State Government as well as to the Management. The Union was mostly aggrieved by the transfer of machinery as also the transfer of the personnel, who were the members. It seems that all the persons, who have been transferred were communicated by the appellant company that their services were valuable and required for the suitable growth of the company and in that view, the said persons were transferred. It seems that such persons were to be given an increase of 30% of the existing gross salary and were also entitled to some substantial displacement allowance per month. All this, it seems was opposed by the 1st respondent Union. In fact this Union had notified to the appellant company only on May 28, 1998.

5. It will be interesting to note on this background that few of the workers, who were transferred approached the Labour Courts resisting their transfers. However, the Union raised a dispute regarding the proposed transfer of the machinery as well as the employees. On this background an application came to be filed on June 1, 1998 before the Assistant Commissioner of Labour, Madras u/s 10(2) of the Act. In this application the prayer was for directing the Management of the appellant company to provide job assurance to the employees, who were working at Chennai as

also to prevent the Management from shifting the factory and or the machinery from Chennai to any other place. Thus, the conciliation proceedings were initiated by this application. It seems that after the conciliation proceedings were initiated, the Union gave a notice to the appellant company and advised them not to effect transfers. This advice was obviously in pursuance of an earlier communication made by the Union to the appellant company dated May 30, 1998 wherein the Union had pointed out that the factory earlier was producing formulations such as tablets, capsules, liquids and injections and that it would be a profitable unit and after merger with the Sun Pharmaceuticals Industries Limited, the productions at Dadha Nagar of both bulk drugs and formulations had been systematically shifted to Baroda and this was done to revive one of the sick units at Baroda. It seems that some departments of the bulk production were also shifted to another sick unit called Pradeep Drug Company. It was also asserted in this communication dated May 30, 1998 that the Director of the present company had informed the employees the intention to shift the entire organisation and production and close down the Dadha Nagar factory and that is the intention of the management and the management had started packing and shifting, more and more machineries from Chennai. It was further pointed out that the research development and the Bio-technology division would also be closed down and shifted to Baroda. A demand therefore had been made in this communication dated May 30, 1998 that the formulations and bulk drug machineries which were shifted from Dadha Nagar factory to other location should be returned to Dadha Nagar, Chennai. Secondly that no further machineries whether used for manufacturing, testing and for research development purpose should be shifted from Dadha Nagar. Thirdly no employee now working at Chennai should be transferred against the wishes of such employees. Fourthly, the bulk drug production at Dadha Nagar for captive consumption shall be used only at Dadha Nagar and shall not be transferred to any other location. Fifthly, no person from Dadha Nagar factory shall be asked to demonstrate process and know-how at any other locations. Sixthly, that no employees shall be retrenched. Seventhly, the employees sent out during the past years having more than a year of service have to be reinstated into the service and lastly, no transfer of machineries and raw materials should be shifted to any other locations. It seems immediately after this

communication dated May 30, 1998, the aforementioned application u/s 10(2) came to be made before the Assistant Commissioner of Labour.

6. It seems also that on the very same day a statement required under Rule 28 of the Industrial Disputes Rules was also sent to the secretary to the

Government of Tamil Nadu. In this statement also it was asserted that 400 employees were transferred to various units of Sun Pharmaceuticals

Industries Limited and thus the Management was bent upon depriving livelihood of 500 employees and their dependants by shifting the whole

factory which was a profit making unit and which was having tremendous potential growth. It is also asserted that at the time of amalgamation, the

employees were not informed that the entire unit of Tamil Nadu will be shifted. It is pointed out that the employees were totally opposed to the

shifting of machineries and employees to anywhere except Chennai. As has been stated earlier, thereafter a notice came to be sent to the appellant

company advising them not to transfer the employees.

7. On June 10, 1998 the present Writ Petition No. 7869/1998 came to be filed a reference to which has already been made, on June 8, 1998 the

Conciliation Officer seems to have informed the present appellant company that since a dispute had been raised u/s 2 alleging therein that the

employees of the company were threatened with transfer consequent to the amalgamation of the unit with Sun Pharmaceuticals Industries Ltd. and

since the matter had been taken up for discussion, a status quo ante should be maintained and the company should desist from transferring the staff.

The appellant company was also invited for a discussion on June 22, 1998 at Chennai at 12.00 noon. It seems, however, that the writ petition

came up before the learned single Judge for hearing on June 11, 1998, who ordered notice of motion. The learned single Judge has allowed the

writ petition as has been stated earlier and granted the reliefs which has necessitated the writ appeal by the appellant company.

8. The learned senior counsel appearing on behalf of the appellant company has predominantly contended that firstly there are no bona fides with

the petitioner and even without waiting for the result of the conciliation, the Union has chosen to file the writ petition. Again in this writ petition

which was filed, though seemingly, the relief is claimed only against the Assistant Commissioner of Labour by way of a direction to him to decide

and conclude the conciliation proceedings at an early date, the interim and main relief which have been claimed is only against the appellant

company, which was an injunction against the company restraining it from transferring any of the employees or any of the machineries from

Chennai. According to the learned senior counsel firstly such relief could not have been asked for at all in the present petition and it was clear that

the interim prayer was the ultimate and main object of the petitioner-Union. It is also pointed out by the learned senior counsel that in the name of

interim relief, the Union had sought more than what they can ask for. The learned senior counsel also points out that the relief of injunction was in

the nature of relief which could have had been asked only after the dispute was referred to the Labour Court and the said dispute was decided one

way or the other. The learned senior counsel therefore submits that in allowing the petition, the learned single Judge has not only entertained an

untenable petition but has proceeded to grant the relief which was firstly not possible to be given in the writ Jurisdiction and which amounted to a

final relief. The learned senior counsel submits that even if the writ petition could be held to be maintainable against the Assistant Commissioner of

Labour. All that could have been granted was the direction to the 2nd respondent to decide and dispose of the conciliation proceedings by way of

fixing a date. However, while doing that, no directions could have been given and no injunction could have been issued, which injunction could

have been issued only at the finalisation of the dispute before the Labour Court. The learned senior counsel also urged that in allowing the writ

petition, the learned single Judge has not only prejudged the issue but has totally closed further avenue of testing the claim of the Union by the

Labour Court. Lastly the learned senior counsel pointed out that even on merits, inferences drawn by the learned single Judge were not and could

not be justified and there may be number of factual anomalies which the learned single Judge has failed to notice.

9. As against this the learned senior counsel Ms. Nalini Chidambaram, appearing on behalf of the 1st respondent-Union has supported the

Judgment and pointed out that considering the monstrosity of the situation, the writ petition was perfectly justifiable and the learned single Judge

was only justified in granting the relief of injunction. The learned senior counsel argued that the Union had no other go but to have effective remedy

of filing the writ petition for preventing the total adhesions. She further argues that the whole company was being wiped out from Chennai and was

sought to be shifted and thus substantial number of 500 workers were being uprooted and therefore, there was no other go but to file the writ

petition and seek the relief of injunction. The learned senior counsel thus supported the Judgment of the learned single Judge in toto. It will

therefore, be necessary to examine the matter from both the angles, technical as well as on merits.

10. In order to buttress his contention, the learned senior counsel for the appellant company invited our attention to the prayer clause of the petition

and pointed out that the main prayer in this petition pertains to a direction to the 3rd respondent herein to complete the conciliation proceedings

started by the petitioner therein on June 1, 1998 at the earliest within a time as may be fixed by the Court and render justice. The learned senior

counsel points out that by way of an interim relief, an interim injunction was claimed restraining the 3rd respondent from shifting the machinery and

raw-materials from Chennai factory to any other location and also from transferring any employee of the company from their present place of work

at Chennai to any other place. The learned Senior counsel urges that though seemingly the writ petition appears to have been filed for the relief of a

direction against the Assistant Commissioner of Labour the main relief is only against the appellant company. It is clear that though seemingly the

petition is filed against the Assistant Commissioner of Labour in reality. The relief has been claimed only against the appellant company and thus it

is only in order to maintain the writ petition under Article 226 that the main prayer has been made. In reality the main relief is an eye wash and in

fact, the only prayer in the writ petition was for an injunction against the appellant company restraining it from transferring the machinery or its

employees.

11. It is indeed clear that the main prayer was itself without any merits. There is nothing in the whole petition to suggest that the 2nd respondent

therein, the Assistant Commissioner of Labour had refused to entertain the conciliation proceedings or that he was postponing the finalisation of the

conciliation proceedings. It is to be seen that the conciliation proceedings came to be filed on June 1, 1998 and it is only on June 8, 1998 that the

Assistant Commissioner of Labour directed the first communication to the appellant company. There was, therefore, no scope to ask for the relief merely two days after the first communication sent by the Assistant Commissioner of Labour to the appellant company to pray that a direction should be issued to the Assistant Commissioner of Labour to complete the conciliation proceedings within a time frame. On this backdrop the learned senior counsel for the appellant company pointed out that the affidavit filed in support of the said writ petition was sworn to on June 6, 1998 which fact could not be refuted by the respondent union. The learned senior counsel, therefore, rightly submits that the prayer for a direction against the Assistant Commissioner of Labour was merely sought to legitimise filing of the writ petition which was otherwise not maintainable against the appellant company, which was a private individual.

12. The learned senior counsel is also right in contending that in rushing to the Court without even waiting for any reaction from the Assistant Commissioner of Labour, the Union has only tried to obtain the relief against the appellant company alone which relief could not have been asked for in a writ petition. The dates of giving notice to the appellant company, filing conciliation proceedings, sending the application under Rule 28 to the Government, swearing of affidavit for the petitioner and filing the petition are extremely telling in this case. In so far as the final relief for which the writ petition was seemingly filed was such which was neither tried to be refused by the Assistant Commissioner nor the appellant. We have already pointed out that the whole affidavit is totally silent about any dilatory tactics on the part of the appellant company or lax attitude of the Assistant Commissioner of Labour in completing the conciliation proceedings and indeed such contention could never have been raised for the simple reason that even on the date when the petition was prepared the appellant company was not even invited by the Assistant Commissioner of Labour in the conciliation proceedings, it is only for the first time that communication sent to the appellant company on June 8, 1998 from the Assistant Commissioner of Labour that it should not participate, maintain the status quo ante and desist from transferring the staff. It was only by this communication that the company was invited for discussion on June 22, 1998. It is liable to be noted that the copy of this communication has

also been sent to the Secretary of the Union and yet even in the wake of this action on the part of the Assistant Commissioner of Labour, the writ

petition came to be filed on June 10, 1998. Thus, atleast on June 10, 1998 when the petition came to be filed, there was really no scope for asking

the main relief which was prayed for in the writ petition and it is clear that the Union was not satisfied with the direction issued by the Assistant

Commissioner of Labour and probably had the objective to have such directions from the Court, for obvious reasons that the Assistant

Commissioner of Labour also within his rights could not have issued such directions under any of the provisions of the Industrial Disputes Act, The

learned senior Counsel for the appellant company points out that in fact in issuing directions on June 8, 1998 the Assistant Commissioner of

Labour, who was the conciliation officer had also awarded the relief, which was the main object of the Union and which relief could have been

granted in its favour only after its claim was decided by the Labour Court in the award proceedings. The learned senior counsel points out that the

Conciliation Officer u/s 11 of the Act did not have any such power to issue any such injunction.

13. It was further argued on behalf of the Union that prior to the conciliation and even after the conciliation proceedings were initiated, the

appellant company had started transferring the machinery as also the personnel and had also started initiating disciplinary proceedings against some

of the members of the Union, who had refused to obey the order of transfer. Few orders were pointed out in this behalf wherein some action

seems to have been taken by the appellant company. It was, therefore, urged that unless an effective action was taken against the company, the

main purpose of the conciliation proceedings would have been over and the whole machinery as well as the personnel would have been transferred

and it was with this idea that the petition could have been filed and could have been deemed to be maintainable. In short, the argument is that even

if a direction petition has been filed against the appellant company alone opposing the transfer of machineries and the personnel by the Union, it

would have been maintainable and if such a petition was maintainable, then it could not be said that the present petition, in its present form, was not

maintainable and the petitioner lacks bona fides in filing the same, it was tried to be suggested that while the appellant company had a statutory duty

not to flout the various provisions in the Industrial Disputes Act including the provisions of closure and in shifting the whole factory, lock, stock and

barrel along with the machinery and the personnel, the company was flouting its statutory duty and such a writ petition challenging such action

would be maintainable and the learned single Judge was perfectly justified in granting the relief of injunction. It was also suggested by the learned

senior counsel for the respondent-Union that the shifting of the whole factory and the employees would have had monstrous results and, therefore,

the Union was right in filing the writ petition and the learned single Judge was right in entertaining the same, it was tried to be pointed out factually

that the effects of the appellant company's action would have been devastating so that all the workers would have been left without any remedy.

14. The learned senior counsel for the appellant company, however, pointed out that here also the contention was not right on facts. According to

the learned senior counsel, there was no question of shifting the whole machinery from Chennai nor was it the objective of the company to shift all

the staff of the erstwhile company from Chennai. The learned senior counsel has displayed that in the writ petition filed before the learned single

Judge, untenable factual claims came to be made, which were not justified on the basis of facts and records. Our attention was invited to the

affidavit filed along with the main writ petition and more particularly, para 11, where the writ petitioner has contended that though the factory of

Tamil Nadu Dadha Pharmaceuticals Limited, at Madras was enjoying very high reputation and turnover and had a very good marketing and sales,

strangely, immediately after the amalgamation, the Sun Pharmaceuticals Industries Limited has taken a drastic step to close down the Madras Unit

and retrench its employees at Madras and that future of the members of the petitioner-union was at stake. The learned senior counsel for the

appellant-company argued that the Union had painted a total grim picture and had made an exaggerated untrue claim that the appellant company

was going to close down all its industrial activities at Chennai and thus all its members were going to be either transferred or retrenched. The writ

petitioner had, along with the writ petition, filed a list of its members containing about 268. Indeed, after reading the writ petition, one gathers an

impression that all industrial activities of the appellant at Chennai was going to be wiped out from Chennai. In this behalf, it is pointed out by the

learned Counsel that there was no truth in such a claim and the appellant company had no intention to shift all the workers of the company. Our attention was also invited to the conciliation application, where it is claimed that out of total 500 employees, as many as 300 employees would be affected by such intended transfers. The learned counsel submits that this was a highly exaggerated version as even the total membership of the union was less than 300 and all the members were certainly not going to be transferred. That apart, our attention was also invited to paragraphs 17 to 21 of the counter-affidavit where it was specifically pointed out that under the Amalgamation Scheme and on reassessment of the activities, it was decided by the Board that there should not be duplication of the activities and each industrial unit should be able to concentrate on a particular product and as such some transfers had become necessary. It is also reiterated in the counter that all the activities of Chennai Unit were not going to be closed and that there was no question of closure of any unit and the resultant retrenchment. Thus, we find that there was a specific denial of record of the claim that the appellant company intended to close the whole shop and shift the same elsewhere. It is the claim of the company that some adjustments were bound to be made to make the industry more viable and profitable. Our attention was also drawn to the counter where the relevant clause in the Standing Order of the erstwhile company permitting the transfer of a worker on extension of its activity is referred to. Lastly, the company has put an affidavit before us that the employees to be transferred would not be more than 110 approximately. Beyond asserting that the whole industrial activity is going to be transferred, the union has not been able to put before the learned single Judge or even before us any concrete material to support its claim. It was asserted before us that even if a part of the unit and/or its machinery was transferred, it could not amount to a closure nor could the provision regarding retrenchment be attracted.

15. The learned single Judge has taken into consideration certain letters written by the company to some of the employees. He has also relied on the assertions made by the Union and the fact that some of the workers were transferred and against some, disciplinary actions were taken. In our opinion, these letters could be deemed to be an unassailable evidence to support the inference of total extinction of all the activities of the company

from Chennai. No letter suggests such a sweeping claim. The alleged letters refer merely to some departments or units being shifted with an

objective to bring centralisation in the activities of the company. The terminology in those letters cannot be said to have been used in the technical

or legal parlance. Probably, the term "closure" used in one of the letters has sent the shock waves. However, we are convinced that these letters

do not spell out any intention on the part of the company to pack up the whole industry in Chennai and to shift it elsewhere. The said letters cannot

be read in isolation. This is apart from the fact that such letters could not by themselves provide a basis for the finding of fact drawn by the learned

single Judge in paragraph 38 of the Judgment. The learned Judge holds as under:

38. Prima facie, I am satisfied that this is a case of total obliteration and extinction of the identity of the company and a cessation of all activities at

Chennai. The transfer concept advocated is only a camouflage for closure lacking in bona fides with a view to avoiding the onerous provisions of

the Act relating to closure like giving a notice, payment of closure compensation and obtaining the prior approval of the Government which is a

mandatory requirement. In paragraph 30 of the counter, the Standing Order of the quondam company DPIL is sought to be relied on. Even

assuming that the said Standing Order is applicable, it is not as if DPIL is transferring its workmen from department to department or section to

section or branch to branch. It is a case of a transplantation of workmen from one company to an entirely different organisation situated in the

distant States of Maharashtra, Gujarat and Bihar. In my view, the Standing Orders relied on by the third respondent cannot in terms apply to the

case on hand. The threat does not appear to be imaginary. It is not a false alarm either.

16. In our considered opinion, firstly, such a finding of fact could not be given in a writ petition under Article 226 of the Constitution as the

conciliation proceedings between the parties were pending and on failure of such conciliation proceedings, this precisely would have been the issue

before the Labour Court before whom a reference would have been made in the event of failure of conciliation proceedings. There would have

been an opportunity to the parties to lead oral and documentary evidence before the Labour Court before whom the parties issue would have been

raised as to whether the Company had flouted the various provisions of the Industrial Disputes Act regarding the closure of an industry as also

regarding the illegal retrenchments in the name of transfers. Whether there was going to be a wholesale transfer and total obliteration and extinction

of the identity of the fact could not have been decided on the basis of an affidavit of the union and a few letters sent to its members and the said

issue was possible to be decided only after both the parties got adequate opportunities to lead proper evidence in that behalf. In our considered

opinion, firstly, this issue could not have been answered in the present writ petition, at all, as it amounted to prejudging and it was possible to give

the finding only after the failure of the conciliation proceedings and after full trial of the reference resultant thereto. Secondly, we are of the clear

opinion that such finding is not warranted at least on the basis of the material available in this writ petition. We deliberately do not want to go into

the correctness of the finding as it would be for the Labour Court to test the factual situation and to give a finding only in the event of failure of the

conciliation proceedings and the resultant reference to the Labour Court. According to us, the finding by the learned single Judge that the transfer

concept was only a camouflage for closure. Lacking in bona fides with a view to avoiding the onerous provisions of the Act relating to closure like

giving of notice, payment of closure compensation and obtaining the prior approval of the Government is premature. The same thing can be said

about the applicability of the Standing Order of DPIL (the erstwhile company at Madras). The further finding that this was a case of transplantation

of workmen from one company to a different organisation situate in the distant States of Maharashtra, Gujarat and Bihar, has also to be termed as

premature. It is probably on account of these findings that the learned single Judge has chosen to hold the petition to be tenable. The learned single

Judge has expressed that the question of transfer of machineries and the personnel was an integral question to the conciliation proceedings. It has

also been held that the interim directions of the orders prayed for arise from and are related to the main prayer. According to the learned Judge,

they are inter-linked and not dissociated in any way. The learned Judge proceeds to hold that if during the pendency of the conciliation

proceedings, the respondent removes the machineries, transfers the staff and shifts the area of operation from Chennai, the very purpose of

conciliation would be defeated and that, therefore, unless the third respondent keeps his hands off till such time the conciliation proceedings get

over, the interim prayers would be redundant and unnecessary and that the third respondent was not willing to such a course as he had filed a writ

miscellaneous petition for relieving the company of the undertaking not to precipitate matters. The learned Judge has also held that the filing of such

writ miscellaneous petition would spell lack of bond fides on the part of the appellant-company. With respect, we do not agree with these findings.

In the first place, we have already shown that while the main prayer is for a direction to complete the conciliation proceedings within a particular

time limit (though there was no occasion or cause of action for the same), the further prayer for the interim relief is for the injunction, restraining the

appellant-company from transferring the employees or the machineries. Now, the second prayer could never have been granted as per the

established norms of Law of injunction to the effect that an injunction of a prohibitory nature cannot be granted at the interim stage where such

injunction is possible only after the final decision of the dispute between the parties. We do not see as to how the so-called interim prayer could be

termed as such interim. In our opinion, that prayer is the only relevant and final relief which was sought by the writ petitioner-union. In fact, the so-

called main prayer seems to have been made only with an idea to legitimise the otherwise untenable writ petition under Article 226 of the

Constitution.

17. We also do not agree with the observations of the learned single Judge that if the interim prayer is not granted, the very purpose of the

conciliation proceedings would be defeated. The learned senior counsel for the appellant in this behalf, has relied upon Sections 33, 33-A, 33-B

and 34 of the Industrial Disputes Act. The learned senior counsel argues, and in our opinion rightly, that if there is something which the company

does during the pendency of the conciliation proceedings before the Conciliation Officer to alter to the prejudice of the workmen, the conditions of

service, such situation can be taken care of by resort to Sections 33 and 33-A of the Industrial Disputes Act which provide enough guidance as to

the course to be undertaken by the aggrieved party. Section 33-B is also a relevant section apart from the penal provisions which have been

provided by Section 34. Section 31 is clear to suggest that contravention of provisions of Section 33 is an offence by itself. We are afraid, these provisions have not been taken into consideration by the learned single Judge while giving the above mentioned finding. Our attention was also drawn to the observation in the impugned judgment that a learned single Judge has distinguished the Judgment of another learned single Judge of this Court holding that a petition of one Ms. Usha Abraham (who admittedly was an employee and also a member of the present union) against the appellant-company challenging her transfer, was not maintainable. The learned single Judge in *Usha Abraham v. Sun Pharmaceutical Industries Ltd.* (Writ Petition No. 6926 of 1998 dated June 2, 1998): (reported in 1998 Lab. IC 3115) (Madras) has held that mere impleading of the State of Tamil Nadu represented by Commissioner and Secretary, Department of Industries, would not legitimise such a petition. While distinguishing the judgment by SUBRAMANI, J. the learned single Judge has observed that the essential difference in the case decided and in the present case was that the relief sought for in the present case was against the first and the second respondents, the State of Tamil Nadu and the Assistant Commissioner of Labour respectively. The learned single Judge (S. S. SUBRAMANI, J.) has relied on a judgment reported in *P.B. Ghayalod Vs. M/s. Maruti Udyog Ltd. and others*, . Though the learned single Judge accepts that the position as regards the first respondent was identical as in the reported Delhi High Court judgment cited supra, he has distinguished the judgment of S. S. SUBRAMANI, J. only on the ground of the relief sought for in the present case having been only against the State and the Assistant Commissioner. We have already pointed out that in the first place, that relief was not warranted and secondly that could not be said to be the main and the only relief sought for in the petition. Instead, the so-called interim relief asked for in the present petition was itself in the nature of a final relief, which could never be asked in a writ petition under Article 226 of the Constitution.

18. S.S. Subramani, J. in that petition had also given a specific finding against the petitioner Usha Abraham that there ought to be a primary duty on the part of the company to do service to the public as was held in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav*

Smarak Trust and Others Vs. V.R. Rudani and Others, . He had also held that the present company was purely a private body with no public duty

and, therefore, there was no question of issuance of writ of mandamus against it. We are afraid, the said judgment being that of the co-ordinate

Bench and being in respect of the very company, which was also before the learned single Judge, was of a binding nature. We have already

pointed out that the reasons for distinguishing the present Judgment cannot be valid reasons.

19. The learned senior counsel appearing on behalf of the respondent union has then argued that the monstrosity of the situation was such that a

petition could be filed against the appellant-company itself seeking injunction against the same, restraining it from transferring the employees and the

machineries. We do not agree. In the first place, we have shown that the argument in favour of monstrosity was not correct. A mere transfer of

some departments or the transfer of a few workmen, who were already bound by the Standing Orders of the erstwhile company and as such could

be transferred to any place where the company extended its activities, could not spell out the monstrosity. It is well established principle in labour

jurisprudence falling from the judgment reported in Hindustan Lever Ltd. Vs. Ram Mohan Ray and Others, that the management has got the rights

to reorganize its work in the manner it pleases and that the rationalisation or standardisation by itself would not fall under item 10 of Schedule IV

unless it is likely to lead to retrenchment of workmen. The learned single Judge has held that the decision does not advance the case of the

management at this stage of the proceedings. A close look at the decision would suggest that the Supreme Court has accepted that it was for the

management to decide the course of its business and it would not be for the workers to do the same and unless the action of the management

resulted in affecting the rights of the workers, there was no question of the Court's interference, it has to be remembered that the union,

irrespective of the stage of the dispute, has claimed something which, if it claims, were correct in law, could have been possible to be given to the

same only after the decision by the Labour Court. Besides, the learned single Judge has chosen to give almost a final finding of fact in favour of the

Union that the company, in complete breach of the provisions of closure, has decided to shift the whole industry away from Chennai. In that view,

the reason given by the learned single Judge for not following this decision does not appeal to us. According to us, the principle enunciated by the Apex Court would be fully binding in this case and it would not be for the union to decide as to whether a particular activity of the industry should be carried on and in what manner. Similar view has been taken by Calcutta High Court in *Shalimar Paints Ltd. v. Third Industrial Tribunal*, Calcutta, (1971) II LLJ 8 (Cal), while dealing with Section 9-A of the Act. Though the learned single Judge has quoted the relevant expressions in the judgment suggesting the employer's inherent rights to choose his place of business, the learned Judge has really given no reason to differ with the principle enunciated therein. According to us, it would be for the management to decide as to where its business should be. This, we are saying on the basis of the management's avowed declaration that it does not want to shift its whole business from Chennai and that it only proposes to streamline its business. It would therefore, be seen on both the counts viz., on the effects of the proposed shifting as also on the management's power to decide its policy. There does not appear to be any monstrosity which was pressed into service by the learned counsel for the respondents. If there was no monstrosity, then, there could be no question of entertaining the petition for the purposes of issuing interim orders alone. Even the Apex Court in *Cipla Ltd. Vs. Jayakumar R. and Another*, , while interpreting the Standing Orders of the establishment, has approved the transfer of a workman from one establishment of the appellant to another. Whether Standing Order No. 23 of the TDPL would be applicable and what would be its ramifications would be the question to be looked into on merits by the Labour Court and not by this Court in the present petition. The learned Judge has relied upon the judgment of KANAKARAJ, J. in *Mettur Chemicals Podhu Thozhilalar Sangam, Mettur Vs. Chemplast Sanmar Limited, Mettur*, . That was a case where the question was of closure of one mine without obtaining the permission from the prescribed authority under Sections 25-N, 25-O and 25-M of the Act. There, it would appear from the facts that the facts are entirely different as in the present case. There is no question of closure at all and whether amounts to a closure or not is yet to be decided by the Labour Court.

20. Once the issue of monstrosity is answered against the Union, atleast on the prima facie level, the question of tenability of this petition has to be

answered in the negative as per the established norms of tenability found in Anadi Mukta Sadguru Muktajee's case (supra). This is not the case

where the question of protecting the fundamental rights against a private body has arisen. On the other hand, this is a case where there is absolutely

no public duty or statutory duty to be enforced against a private company like appellant company. In P. Madhavan v. Biuny Ltd. 1992 I LLJ 574

a Division Bench of this Court had given a clear finding in paragraph 8 in the following terms:

We have no ambiguity in our mind at the post is of a public nature and it carries with it the duties of significance of an Office, which affects a

section of the general public. The duties annexed to the post enjoins upon the incumbent to maintain harmonious relationship between the

management and the workers, to bring to the notice of the management the grievances of the workers, individual as well as collective, with a view

to secure expeditious redressal. The incumbent should act as a liaison officer between the management and the workers.

He should encourage provision of very many amenities for the workers. He has got a role to play with reference to the provision of welfare

facilities and to suggest measures to raise the standard of living of the workers. We have only broadly recapitulated the duties of a welfare officer,

but they are exhaustively set down in Rule 7. Viewed from the above angles, the office of a welfare Officer can certainly be characterised as an

office of a public and substantive nature.

That was a case where the transfer of a Labour Welfare Officer working in a private company was challenged and the Court finding that there was

a public duty involved, had entertained the petition. The learned Judge has chosen to rely on the judgment. However, we find that the Judgment

would be inapplicable to the facts of the present case. As in the present case we do not find any public or statutory duty which is discernible by the

High Court under Article 226 of the Constitution, we could not therefore, persuade ourselves to agree with the learned single Judge that the

present petition was maintainable.

21. The other cases relied upon by the learned single Judge are:

(i) Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], .

(ii) Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, : (iii) Union of India v. R. Reddappa. 1993 4 SCC 296 :

(1993-n-LLJ-1233).

We have carefully examined these cases and we find that the principle enunciated therein do not apply to the facts of the present case.

22. In paragraph 44 of the impugned Order it is mentioned that if third respondent was not acting contrary to the provisions of the Act, nothing

prevented the third respondent from demonstrating the same before the second respondent. Pending a decision by the second respondent, if

matters are precipitated, the very exercise before the authorities would become futile and otiose. We are afraid, there was no occasion for the

appellant-company to display anything before the Assistant Commissioner of Labour. It is a clear case where the Union has hastened to this Court

without even bothering to wait for the result of the conciliation or any fall out therefrom. The observations that the whole exercise would have been

otiose in the absence of injunction, is also not warranted in view of the discussion above to the effect that there are remedies available within the

framework of the Industrial Disputes Act.

23. It has been pointed out to us that though this petition was for a main relief of a direction that the conciliation proceedings should be directed to

be completed within a time frame, the learned Judge has not fixed any such time frame and has merely proceeded to grant the injunction of a final

nature. Following is the relief granted:

The second respondent is to take up the application submitted by the writ petitioner and decide the same and submit his report as enjoined by the

Act and the Rules.

Till such time the report is submitted by the second respondent, interests of justice would require that the Management should not precipitate

matters by going ahead with the plan of shifting the machinery, transferring the drugs and the employees to Mumbai, Baroda or Patna.

In this, a free hand is now given to the Union to perpetuate the conciliation proceedings as its final objective has already been ordered till such time

the report is submitted.

24. Lastly, it was suggested by the learned counsel for the appellant and in our view rightly that in the wake of the finding given by the High Court,

nothing more would be required to be done by the Labour Court even if the conciliation fails and the matter is referred to the Labour Court. As the

findings of this Court would be binding on the Labour Court, the criticism is justified. The said findings could not have been finalised much less in

the proceedings pending before the learned single Judge under Article 226 of the Constitution as the writ petition itself was not maintainable.

25. For all these reasons, the order of the learned single Judge is set aside and the writ petition is held to be untenable and it is dismissed.

26. Since the writ petition itself has been held to be untenable, there will be no question of giving any direction. However, in the interests of justice,

we observe that the Assistant Commissioner of Labour would be well advised in disposing of the conciliation proceedings as early as possible and

preferably within two months from the date on which the judgment reaches the said authority.

27. In the result, the appeal is allowed and the writ petition is ordered to be dismissed without any order as to costs. CMP No. 1623 of 1999 is

dismissed.